

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

IGT GLOBAL SOLUTIONS

Employer

and

Case 01-RC-176909

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 251

Petitioner

ORDER

The Petitioner's Request for Review of the Regional Director's Decision and Order is granted as it raises substantial issues warranting review.¹

¹ Review is granted as to whether the Regional Director erred, under Sec. 102.66(d) of the Board's Rules & Regulations, by permitting the Employer to litigate issues contained in its untimely served Statement of Position, and by finding that the petitioned-for unit was inappropriate under *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.2d 552 (6th Cir. 2013).

Member Miscimarra agrees with his colleagues that the Petitioner has raised substantial issues warranting review of the Regional Director's determination that the petitioned-for unit of six Field Service Technicians employed at the Employer's West Greenwich, Rhode Island facility is not an appropriate unit for bargaining. In granting review on this issue, however, Member Miscimarra would not apply *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. sub nom. 727 F.3d 552 (6th Cir. 2013), for the reasons he articulated in *Macy's, Inc.*, 361 NLRB No. 4, slip op. at 22-33 (2014) (Member Miscimarra, dissenting). Member Miscimarra would deny review with respect to the Petitioner's contention that, because the Employer failed to timely serve its Statement of Position on the Union, it was precluded from litigating the appropriateness of the unit. In Member Miscimarra's view, this issue is governed by Sec. 9(b) of the Act (requiring the Board "in each case" to decide what bargaining unit would "assure to employees the fullest freedom in exercising [protected] rights") and *Brunswick Bowling Products, LLC*, 364 NLRB No. 96 (2016) (finding it is appropriate for regional directors to make determinations regarding relevant issues, even if they favor the party that failed to comply with the Statement of Position requirement set forth in the Board's Election Rule). See also Board's Rules & Regulations Sec. 102.66(b) and 79 Fed. Reg. 74307, 74399, 74484 (Dec. 15, 2014) (stating that non-compliance with the Statement of Position requirement does not "limit the regional director's discretion to direct the receipt of evidence concerning any issue, such as the appropriateness of the proposed unit, as to which the regional director determines that record evidence is necessary"); *Brunswick*, supra, slip op. at 3 ("[N]otwithstanding a party's

MARK GASTON PEARCE, CHAIRMAN

PHILIP A. MISCIMARRA, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., December 21, 2016.

failure to comply with the Statement of Position requirements . . . , if any relevant issue exists . . . then (i) the issue may be fully investigated by the Region, (ii) it may be the subject of evidence introduced at the hearing, and (iii) the Regional Director and the Board may fully consider and resolve the issue in favor of the non-complying party, even if the issue's resolution requires dismissal of the election petition itself.") (Member Miscimarra, concurring in part and dissenting in part). More generally, Member Miscimarra adheres to his dissenting views regarding the Election Rule, see 79 Fed. Reg. 74430-74460, including his disagreement with provisions in the Rule that purport to preclude the resolution of relevant issues based on non-compliance with the Statement of Position requirements.